

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE STILLAGUAMISH TRIBE OF  
INDIANS,

Plaintiff,

v.

DAVID L. NELSON, et al.,

Defendants.

CASE NO. C10-327RAJ

ORDER GRANTING IN PART  
DEFENDANT TOM ASHLEY'S  
MOTION FOR PROTECTIVE  
ORDER

This matter comes before the court on defendant Tom Ashley's motion for protective order striking 332 requests for admissions ("RFA") served by plaintiff The Stillaguamish Tribe of Indians (Dkt. # 243), and motions to seal filed by both parties (Dkt. # 242, # 253).

**A. Motions to Seal**

Defendant and plaintiff have filed motions to seal. Dkt. # 242, # 253. The court will address each in turn.

Defendant argues that "[t]he Declaration of Robert J. Wayne contains as exhibits 1) a settlement letter and 2) Requests for Admissions containing the names of alleged

1 patients of a methadone treatment clinic.<sup>1</sup> The Court has previously entered an order  
2 requiring that the confidentiality of those records be preserved. By sealing the  
3 Declaration and exhibits the Court will be protecting important privacy concerns.” Dkt. #  
4 242.

5 Defendant’s motion is deficient for several reasons. First, defendant has failed to  
6 provide a declaration with the facts supporting the motion. Local Rules W.D. Wash. CR  
7 5(g)(4). Second, defendant has failed to attempt to redact sensitive information first,  
8 rather than seeking to file the entire document under seal. *Id.* 5(g)(3). Third, defendant  
9 seeks to file documents under seal that do not contain confidential patient names. Fourth,  
10 the court has not entered a protective order declaring “settlement letters” as confidential.  
11 The court has previously entered a protective order governing the confidentiality of  
12 patient records in methadone clinics during discovery. Dkt. # 206. Defendant has not  
13 provided the court with any legal or factual authority why counsel’s declaration, the meet  
14 and confer letter, or the settlement letter should be sealed. Defendant has not  
15 demonstrated that the public’s right of access is outweighed by the interests of the public  
16 and the parties in protecting the court’s files from public review. Accordingly, the court  
17 will unseal these documents on June 5, 2012.<sup>2</sup> Dkt. # 245, 245-1, 245-2. Defendant has  
18 until June 5, 2012 to file a notice of withdrawal if he wishes to withdraw the settlement  
19 letter from the record. In the interests of time and efficiency, the court will keep Dkt. #  
20 245-3 under seal. However, in future filings, the parties must redact portions of filings  
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23 <sup>1</sup> The court has reviewed the settlement letter, and notes that it does not identify any  
24 individuals as patients of methadone clinics. The court is concerned about the casual nature of  
25 seemingly inaccurate statements made to the court by both parties. There is a difference between  
26 zealous advocacy and misrepresentations to the court, and the parties are walking a fine line.  
27 The court has given the parties the benefit of the doubt here. It may not do so in the future.

<sup>2</sup> The court acknowledges that counsel for defendant is unavailable from May 18 to May  
31, 2012, and that plaintiff’s counsel is unavailable until May 23, 2012. Dkt. # 215, # 260. The  
court has attempted to accommodate counsel’s schedule in setting deadlines in this order.

1 that may be redacted, rather than file the entire document under seal, where such  
2 redactions are feasible.

3 Plaintiff argues that the declaration of Mr. Baker contains the RFA as an exhibit,  
4 which contains the names of alleged patients of a methadone treatment clinic. Dkt. #  
5 253. Mr. Baker has supported his motion with a declaration pursuant to the local rules.  
6 However, plaintiff's motion suffers from similar defects to defendant's motion because it  
7 seeks to seal documents that do not contain names of the alleged patients of a methadone  
8 treatment clinic. Plaintiff filed the declaration and accompanying exhibits as one docket  
9 entry, and the court cannot selectively unseal portions of one docket entry. Accordingly,  
10 plaintiff is ORDERED to re-file the Baker Declaration, and Exhibits B and C by May 29,  
11 2012. The court will keep Dkt. # 252 under seal for purposes of preserving the names of  
12 patients that appear in the RFAs, which is attached as Exhibit A to the Baker declaration.

13 Accordingly, the court GRANTS in part and DENIES in part the parties' motions  
14 to seal.

### 15 **B. Motion for Protective Order**

16 On April 11, 2012, plaintiff served Mr. Ashley with its first set of requests for  
17 admissions that included 332 RFAs. Plaintiff characterizes the 332 RFAs as the same  
18 five questions for sixty-six clinic patients who have incorrect entries for pro bono  
19 services. Dkt. # 251 at 3. On April 13, 2012, counsel for the parties met and conferred.  
20 Dkt. # 245 (Wayne Decl.) ¶ 2, Ex. A. Defendant objected to the number of requests as  
21 oppressive, because defendant has limited resources, counsel is a sole practitioner, and  
22 the time required to answer so many requests would be considerable. *Id.*, Ex. A.  
23 Defendant also objected to the requests because the matters requested were not within his  
24 personal knowledge. *Id.*

25 Plaintiff only offered one "compromise": to have defendant respond to the first  
26 seven requests, and then simply respond that the rest would be the same. *Id.* This alleged  
27 "compromise" is nothing more than a demand to answer all RFAs as worded, because

1 defendant would still be required to satisfy his obligations under Federal Rules of Civil  
2 Procedure 11 and 36. In response, defendant suggested that plaintiff “consider  
3 propounding a simpler request along the lines of ‘Did you misappropriate money from  
4 Plaintiff by altering the patient records.’” *Id.* Plaintiff rejected this offer. *Id.* Plaintiff  
5 has characterized this offer as an offer of only responding to a single RFA. Plaintiff’s  
6 characterization is not entirely accurate. Regardless, plaintiff offered no other  
7 compromise, and instead indicated that the matter would have to be decided by the court.  
8 *Id.* Plaintiff has not contested the accuracy of any statement made in the April 13, 2012  
9 letter that summarized the meet and confer conference. Rather, plaintiff argues that the  
10 motion was filed prematurely. However, plaintiff does not dispute that plaintiff’s counsel  
11 told defendant that the court would have to resolve the dispute. Defendant was left with  
12 no other option but to file the motion for relief.

13 On April 23, 2012, defendant filed this motion. On April 29, 2012, plaintiff  
14 offered to narrow the 332 RFAs to three. Dkt. # 252 at 89 (Ex. B to Baker Decl.). In  
15 response, defendant “agreed to the reduction to 3 requests for admissions” and requested  
16 that plaintiff reimburse defendant for the fees incurred in bringing the motion. *Id.* at 91  
17 (Ex. C to Baker Decl.). Plaintiff then characterized defendant’s response as a refusal to  
18 agree and indicated that it would not agree to pay the costs related to the motion or reply.  
19 *Id.* Plaintiff’s characterization of defendant’s response is inaccurate. Defendant did  
20 agree to the three RFAs. Defendant also indicated that in reply, he would simply ask the  
21 court to award costs of bringing the motion. *Id.* Given that the parties agreed to the three  
22 RFAs, the only issue that should be before the court is attorney’s fees. Significant  
23 resources of the parties and the court could have been saved, and plaintiff would have  
24 received responses on May 18, 2012.

25 The court GRANTS defendant’s motion for protective order in part, and ORDERS  
26 defendant to respond to the three RFA’s to which he agreed to respond by June 8, 2012.  
27 In his reply, defendant seeks attorney’s fees incurred in bringing the motion and reply.

1 Dkt. # 258. Plaintiff has not had an opportunity to respond. The court ORDERS plaintiff  
2 to SHOW CAUSE why attorney's fees should not be granted to defendant incurred in  
3 bringing the motion for protective order and reply no later than June 8, 2012.

4 **C. Conclusion**

5 For all the foregoing reasons, the court GRANTS in part and DENIES in part the  
6 parties' motions to seal. Dkt. # 242, # 253. Defendant has until June 5, 2012 to file a  
7 notice of withdrawal if he wishes to withdraw the settlement letter from the record. The  
8 clerk is ORDERED to re-note defendant's motion to seal to June 5, 2012. Dkt. # 242.  
9 Plaintiff is ORDERED to re-file the Baker Declaration, and Exhibits B and C by May 29,  
10 2012. The court will keep Dkt. # 252 under seal for purposes of preserving the names of  
11 patients that appear in the RFAs as Exhibit A.

12 The court also GRANTS defendant's motion for protective order in part, and  
13 ORDERS defendant to respond to the three RFA's to which he agreed to respond by June  
14 8, 2012. Dkt. # 243. The court ORDERS plaintiff to SHOW CAUSE by June 8, 2012  
15 why attorney's fees incurred in bringing the motion for protective order and reply should  
16 not be granted to defendant. The court also ORDERS plaintiff and defendant to meet and  
17 confer regarding the reasonableness of the fees incurred by June 4, 2012, and ORDERS  
18 plaintiff to advise the court in its response to the court's order to show cause whether  
19 there is a dispute as to the reasonableness of the fees incurred.

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21 Dated this 21<sup>st</sup> day of May, 2012.

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24 The Honorable Richard A. Jones  
25 United States District Judge  
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